IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 2ND FEBRUARY 2007 / 13TH MAGHA 1928

WP(C).No. 535 of 2007(L)

PETITIONERS:
---

1. BIJU, S/O. SREEDHARAN,
OZHAKKANATTU HOUSE, RAMANGALAM KARA,
MARADI VILLAGE,
MUVATTUPUZHA TALUK.

2. BINU, S/O. -DO- -DO-

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS:

1.MUVATTUPUZHA MUNICIPLITY, REP. BY
THE SECRETARY, MUVATTUPUZHA P.O.
MUVATTUPUZHA.

2.THE SECRETARY,
MUVATTUPUZHA MUNICIPALITY,
MUVATTUPUZHA. P.O.

3.VARGHESE KURIAN,
S/O. KURIAN, MADAPARAMBIL HOUSE, NJARAKKODU KARA,
KADAVOOR VILLAGE, KOTHAMANGALAM TALUK.

R3 BY ADV. SRI.S.SREEKUMAR
R1-R2 BY ADV. SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SMT.TULASI PANICKER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

- -

W.P.(C)No.535 of 2007

- -

Dated: 2nd February, 2007

JUDGMENT

On 16th January, 2007 I passed an interim order directing the Taluk Surveyor, Muvattupuzha to conduct a measurement of the property belonging to the petitioners by virtue of Ext.R3(a) document and the property belonging to the 3rd respondent by virtue of his documents of title and to identify those properties. I specifically directed that the Taluk Surveyor will while conducting measurement, also refer to Ext.P5 produced in this case and show the portion referred to therein as B-schedule veranda/passage separately in the plan to be prepared by him. He was directed to cross-check the measurement with the approved plan issued by the Muvattupuzha Municipality to the third respondent (Ext.P7) and specifically mention in his plan as to whether any portion of the proposed construction or the area shown as statutory set back in that plan takes in the B-schedule property in Ext.P5 rough sketch and also whether it takes in any portion of the property covered by Ext.R3(a) document. Accordingly, the Taluk Surveyor conducted a measurement and has submitted plan and report before this court. The report and plan will be annexed to this judgment.

2. The grievance which has been raised more prominently in this case by the petitioners is that B-schedule property in Ext.P5 over which they claim title and possession and is subject matter of O.S.No.423/06 on the files of the Munsiff's Court, Muvattupuzha has been shown by the third respondent in the plan submitted by him before the 1st respondent-Municipality and that the Muncipality has treated that property (hereinafter referred to as the disputed property) as property belonging to the third respondent for the purpose of statutory set backs. In the plan submitted by the Taluk Surveyor the disputed property is shown as B-schedule property shaded green having an area of 15 Sq.M. It has been clearly stated in the report that on cross-checking with the building plan submitted by the third respondent which was approved by the Municipality (Ext.P7) no portion of the construction to be made by the 3rd respondent or for that matter any portion shown as set back will come within the disputed property or within the property covered by the title documents standing in the name of the petitioners.

3. I have heard the submissions of Mr.Mathew John(K), learned counsel for the petitioners and Mr.S.Sreekumar, learned counsel for

the third respondent.

4. Having heard the submissions and having carefully considered the report and the plan submitted by the Taluk Surveyor, I am of the view that there is no justification for holding up the construction work which is taken up by the third respondent on the strength of Exts.P6 and P7. The issue between the parties as to title/possessory rights over the disputed property cannot be resolved in this Writ Petition and will have to be resolved in the ongoing civil litigation. Going by the plan submitted by the Taluk Surveyor, a set back of 1.13 metres is seen provided from the southern boundary line of the disputed property for the building proposed by the third respondent. The third respondent while carrying out construction will ensure that the construction is carried out strictly in accordance with the plan approved by the Municipality and shown in the enlarged plan submitted by the Taluk Surveyor and will not be entitled to make any constructions within a distance of 1.13 metres from the southern line of the disputed property.

5. I make it clear that I have not expressed any opinion on the merits of the claims and contentions of the parties regarding

title/possession over the disputed property. All those issues will be adjudicated by the civil court.

The Writ Petition will stand disposed of with the above directions.

srd **PIUS C.KURIAKOSE, JUDGE**